

LOW MOD FUND EXCESS SURPLUS

Exhibit D: Agency Excess Surplus Data

Exhibit D

Low-Mod Fund Excess Surplus

Exhibit D identifies agencies with Excess Surplus. Health & Safety Code Section 33334.12 requires Excess Surplus to be determined on the first day of a fiscal year. The calculation considers the sum of tax increment deposited over the previous four fiscal years and the agency's adjusted beginning balance (prior year's ending adjusted unencumbered balance). Agencies are allowed to adjust their unencumbered balance to exclude the amount of unspent proceeds from the sale of bonds and the difference between the prices of land sold during the reporting period compared to the land's fair market value. By statutory definition, Excess Surplus occurs when the adjusted unencumbered balance exceeds the greater of: (1) \$1 million dollars or (2) the combined amount of tax increment revenue deposited over the preceding four fiscal years.

Exhibit D identifies 9 agencies with Excess Surplus totaling \$4,480,633. Last year, 58 agencies were identified as having Excess Surplus of \$85,683,723. The significant change between these years indicates agencies took action to ensure their ability to spend Excess Surplus and not incur penalties. The law requires that agencies with Excess Surplus must either: (1) transfer Excess Surplus to the local county housing authority within one year or (2) spend or encumber all the remaining Excess Surplus within two additional years from the time limit given to transfer funds to the county housing authority. If Excess Surplus is not eliminated within three years, penalties apply. Excess Surplus penalties, per Section 33334.12(e), include: (1) limiting an agency's actions such as preventing the agency from encumbering and spending its funds and (2) charging the agency's other (non-housing) funds an amount equal to 50 percent of the amount of Excess Surplus that must be deposited to the Low-Mod Fund. To date, no agencies have reported Excess Surplus beyond the three (3) year time period to incur penalties.

Since July 1, 1994, the first day that Excess Surplus was required to be determined, many agencies have struggled with making the correct calculation. The accuracy in calculating and reporting Excess Surplus has been problematic due in part to the complexity of the statutory formula and also because many agencies did not consider allowable adjustments for unspent debt proceeds and land sales. In 1997, the Bureau of State Audits, at the request of the Legislature, reviewed Excess Surplus reported by many agencies and found inaccuracies among most agencies.

Redevelopment law impacting the determination of Excess Surplus (originated by Assembly Bill 1290, Isenberg, Statutes of 1993) was amended in 1999 and 2001. To remedy problems in correctly determining and reporting Excess Surplus, Assembly Bill 634 (Wildman, Statutes of 1999) requires the agency's independent auditor to calculate Excess Surplus based on audit guidelines prescribed by the State Controller in consultation with HCD and to report the existence of Excess Surplus in the agency's annual audit. The State Controller and HCD must be provided a copy of the agency's independent annual audit. In 2001, a new provision was added (Senate Bill 211, Torlakson) specifying that before an agency can amend its redevelopment project area plan to extend certain time limits to incur debt and continue to receive tax increment, the agency must first submit data to enable HCD to confirm that the agency has not accumulated Excess Surplus.